

AMENDED IN SENATE JUNE 1, 1999

AMENDED IN SENATE APRIL 28, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 595

Introduced by Senator Speier

February 23, 1999

An act to amend Section 2216 of the Business and Professions Code, and to amend Sections 1248, 1248.1, 1248.15, 1248.2, and 1248.25 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Speier. Outpatient settings.

Existing law provides for the regulation of outpatient settings by the Division of Licensing of the Medical Board of California. Existing law defines an outpatient setting as any facility, clinic, unlicensed clinic, center, office, or other setting that is not a part of a general acute care facility and where designated anesthesia is used in compliance with community standards in doses that when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

This bill would redefine outpatient setting for purposes of the provisions regulating outpatient settings.

Existing law prohibits any physician and surgeon from performing surgery in an outpatient setting using specified anesthesia unless the setting is one of enumerated health care settings.

Existing law prohibits a person from operating an outpatient setting unless the setting is one of enumerated health care settings.

This bill would make technical, nonsubstantive changes to these provisions.

Existing law requires the division to adopt standards for the accreditation of outpatient settings.

This bill would require outpatient settings to post, as designated in the bill, a certificate of accreditation and the name and telephone number of the accrediting agency with instructions on the submission of complaints.

The bill would require outpatient settings and certain other settings to have a minimum of 2 staff persons on the premises, including one licensed health care professional, as long as a patient who has not been discharged from supervised care is present. The bill would require these settings to have a written discharge criteria and would provide that the transfer of a patient who does not meet discharge criteria shall constitute unprofessional conduct.

Existing law requires the division to notify the public, upon inquiry, whether an outpatient setting is accredited, certified, or licensed or whether the setting's accreditation, certification, or license has been revoked.

This bill also would require the division to notify the public pursuant to this provision about whether the outpatient setting's accreditation, certification, or license has been denied *for quality of care reasons*.

Existing law requires an accreditation agency to deny accreditation to an outpatient setting that does not meet the standards approved by the division and requires the accreditation agency to notify the outpatient setting of the reasons for the denial. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill also would require the accreditation agency to notify the division of the reasons that an outpatient setting is denied accreditation. The bill would authorize an outpatient setting to reapply for accreditation ~~no sooner than 12 months~~ *at any time* after receiving notification of the denial.



Under existing law, the willful violation of these provisions regulating outpatient settings is a misdemeanor.

Because this bill would change the requirements of outpatient settings and accreditation agencies, it would change the definition of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2216 of the Business and
2 Professions Code is amended to read:
3 2216. (a) No physician and surgeon shall perform
4 procedures in an outpatient setting using anesthesia,
5 ~~except local anesthesia or peripheral nerve blocks, or~~
6 ~~both, complying with the community standard of~~
7 ~~practice, in doses that, when administered, have the~~
8 ~~probability of placing a patient at risk for loss of the~~
9 ~~patient's life-preserving protective reflexes, unless the~~
10 ~~setting is specified in Section 1248.1. Outpatient settings~~
11 ~~where anxiolytics and analgesics are administered are~~
12 ~~excluded when administered, in compliance with the~~
13 ~~community standard of practice, in doses that do not have~~
14 ~~the probability of placing the patient at risk for loss of the~~
15 ~~patient's life-preserving protective reflexes. including~~
16 ~~intravenous, intramuscular, or rectal sedation or~~
17 ~~analgesia, unless the setting is specified in Section 1248.1.~~
18 *Outpatient setting does not include any setting where*
19 *local anesthesia, minor blocks, or minimal oral*
20 *tranquilization are administered.*
21 (b) On and after July 1, 2000, no physician and surgeon
22 shall perform procedures in an outpatient setting using
23 anesthesia, except local anesthesia, minor blocks, or

1 minimal oral tranquilization, unless the setting is
2 specified in Section 1248.1 of the Health and Safety Code.

3 (c) The definition of “outpatient settings” contained
4 in subdivision (c) of Section 1248 *of the Health and Safety*
5 *Code* shall apply to this section.

6 SEC. 2. Section 1248 of the Health and Safety Code is
7 amended to read:

8 1248. For purposes of this chapter, the following
9 definitions shall apply:

10 (a) “Division” means the Division of Licensing of the
11 Medical Board of California.

12 (b) “Division of Medical Quality” means the Division
13 of Medical Quality of the Medical Board of California.

14 (c) “Outpatient setting” means any facility, clinic,
15 unlicensed clinic, center, office, or other setting that is not
16 part of a general acute care facility, as defined in Section
17 1250, and where anesthesia, including intravenous,
18 intramuscular, or rectal sedation or analgesia is
19 administered.

20 “Outpatient setting” does not include any setting
21 where local anesthesia, minor blocks, or minimal oral
22 tranquilization are administered.

23 (d) “Accreditation agency” means a public or private
24 organization that is approved to issue certificates of
25 accreditation to outpatient settings by the division
26 pursuant to Sections 1248.15 and 1248.4.

27 SEC. 3. Section 1248.1 of the Health and Safety Code
28 is amended to read:

29 1248.1. No association, corporation, firm, partnership,
30 or person shall operate, manage, conduct, or maintain an
31 outpatient setting in this state, unless the setting is one of
32 the following:

33 (a) An ambulatory surgical center that is certified to
34 participate in the Medicare program under Title XVIII
35 (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security
36 Act.

37 (b) Any clinic conducted, maintained, or operated by
38 a federally recognized Indian tribe or tribal organization,
39 as defined in Section 450 or 1601 of Title 25 of the United



1 States Code, and located on land recognized as tribal land
2 by the federal government.

3 (c) Any clinic directly conducted, maintained, or
4 operated by the United States or by any of its
5 departments, officers, or agencies.

6 (d) Any primary care clinic licensed under subdivision
7 (a) and any surgical clinic licensed under subdivision (b)
8 of Section 1204.

9 (e) Any health facility licensed as a general acute care
10 hospital under Chapter 2 (commencing with Section
11 1250).

12 (f) Any outpatient setting to the extent that it is used
13 by a dentist or physician and surgeon in compliance with
14 Article 2.7 (commencing with Section 1646) or Article 2.8
15 (commencing with Section 1647) of Chapter 4 of Division
16 2 of the Business and Professions Code.

17 (g) An outpatient setting accredited by an
18 accreditation agency approved by the division pursuant
19 to this chapter.

20 (h) A setting, including, but not limited to, a mobile
21 van, in which equipment is used to treat patients
22 admitted to a facility described in subdivision (a), (d), or
23 (e), and in which the procedures performed are staffed
24 by the medical staff of, or other healthcare practitioners
25 with clinical privileges at, the facility and are subject to
26 the peer review process of the facility but which setting
27 is not a part of a facility described in subdivision (a), (d),
28 or (e).

29 (i) Nothing in this section shall relieve an association,
30 corporation, firm, partnership, or person from complying
31 with all other laws that are otherwise applicable.

32 SEC. 4. Section 1248.15 of the Health and Safety Code
33 is amended to read:

34 1248.15. (a) The division shall adopt standards for
35 accreditation and, in approving accreditation agencies to
36 perform accreditation of outpatient settings, shall ensure
37 that the certification program shall, at a minimum,
38 include standards for the following aspects of the settings'
39 operations:

1 (1) Outpatient setting allied health staff shall be
2 licensed or certified to the extent required by state or
3 federal law.

4 (2) (A) Outpatient settings shall have a system for
5 facility safety and emergency training requirements.

6 (B) There shall be onsite equipment, medication, and
7 trained personnel to facilitate handling of services sought
8 or provided and to facilitate handling of any medical
9 emergency that may arise in connection with services
10 sought or provided.

11 (C) In order for procedures to be performed in an
12 outpatient setting as defined in Section 1248, the
13 outpatient setting shall do one of the following:

14 (i) Have a written transfer agreement with a local
15 accredited or licensed acute care hospital, approved by
16 the facility's medical staff.

17 (ii) Permit surgery only by a licensee who has
18 admitting privileges at a local accredited or licensed
19 acute care hospital, with the exception that licensees who
20 may be precluded from having admitting privileges by
21 their professional classification or other administrative
22 limitations, shall have a written transfer agreement with
23 licensees who have admitting privileges at local
24 accredited or licensed acute care hospitals.

25 (iii) Submit for approval by an accrediting agency, a
26 detailed procedural plan for handling medical
27 emergencies that shall be reviewed at the time of
28 accreditation. No reasonable plan shall be disapproved by
29 the accrediting agency.

30 (D) All physicians and surgeons transferring patients
31 from an outpatient setting shall agree to cooperate with
32 the medical staff peer review process on the transferred
33 case, the results of which shall be referred back to the
34 outpatient setting, if deemed appropriate by the medical
35 staff peer review committee. If the medical staff of the
36 acute care facility determines that inappropriate care was
37 delivered at the outpatient setting, the acute care
38 facility's peer review outcome shall be reported, as
39 appropriate, to the accrediting body, the Health Care

1 Financing Administration, the State Department of
2 Health Services, and the appropriate licensing authority.

3 (3) The outpatient setting shall permit surgery by a
4 dentist acting within his or her scope of practice under
5 Chapter 4 (commencing with Section 1600) of the
6 Business and Professions Code or physician and surgeon,
7 osteopathic physician and surgeon, or podiatrist acting
8 within his or her scope of practice under Chapter 5
9 (commencing with Section 2000) of the Business and
10 Professions Code or the Osteopathic Initiative Act. The
11 outpatient setting may, in its discretion, permit
12 anesthesia service by a certified registered nurse
13 anesthetist acting within his or her scope of practice
14 under Article 7 (commencing with Section 2825) of
15 Chapter 6 of the Business and Professions Code.

16 (4) Outpatient settings shall have a system for
17 maintaining clinical records.

18 (5) Outpatient settings shall have a system for patient
19 care and monitoring procedures.

20 (6) (A) Outpatient settings shall have a system for
21 quality assessment and improvement.

22 (B) Members of the medical staff and other
23 practitioners who are granted clinical privileges shall be
24 professionally qualified and appropriately credentialed
25 for the performance of privileges granted. The outpatient
26 setting shall grant privileges in accordance with
27 recommendations from qualified health professionals,
28 and credentialing standards established by the outpatient
29 setting.

30 (C) Clinical privileges shall be periodically
31 reappraised by the outpatient setting. The scope of
32 procedures performed in the outpatient setting shall be
33 periodically reviewed and amended as appropriate.

34 (7) Outpatient settings regulated by this chapter that
35 have multiple service locations governed by the same
36 standards may elect to have all service sites surveyed on
37 any accreditation survey. Organizations that do not elect
38 to have all sites surveyed shall have a sample, not to
39 exceed 20 percent of all service sites, surveyed. The actual
40 sample size shall be determined by the division. The

1 accreditation agency shall determine the location of the
2 sites to be surveyed. Outpatient settings that have five or
3 fewer sites shall have at least one site surveyed. When an
4 organization that elects to have a sample of sites surveyed
5 is approved for accreditation, all of the organizations' sites
6 shall be automatically accredited.

7 (8) Outpatient settings shall post the certificate of
8 accreditation in a location readily visible to patients and
9 staff.

10 (9) Outpatient settings shall post the name and
11 telephone number of the accrediting agency with
12 instructions on the submission of complaints in a location
13 readily visible to patients and staff.

14 (10) Outpatient settings shall have written discharge
15 criteria.

16 (b) Outpatient settings, ~~and settings excluded from~~
17 ~~the definition of "outpatient setting" pursuant to as~~
18 *defined in* subdivision (c) of Section 1248, shall have a
19 minimum of two staff persons on the premises, one of
20 whom shall be a licensed health care professional, as long
21 as a patient who has not been discharged from supervised
22 care is present. These settings shall have written
23 discharge criteria. The transfer of a patient who does not
24 meet the discharge criteria to an unlicensed setting shall
25 constitute unprofessional conduct.

26 (c) An accreditation agency may include additional
27 standards in its determination to accredit outpatient
28 settings if these are approved by the division to protect
29 the public health and safety.

30 (d) No accreditation standard adopted or approved by
31 the division, and no standard included in any certification
32 program of any accreditation agency approved by the
33 division, shall serve to limit the ability of any allied
34 healthcare practitioner to provide services within his or
35 her full scope of practice. Notwithstanding this or any
36 other provision of law, each outpatient setting may limit
37 the privileges, or determine the privileges, within the
38 appropriate scope of practice, that will be afforded to
39 physicians and allied health care practitioners who
40 practice at the facility, in accordance with credentialing

standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

SEC. 5. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the division under this chapter.

(b) The division shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the division, and shall notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been denied *for quality of care reasons* or revoked.

SEC. 6. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the division, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting and the division with notification of the reasons for the denial. An outpatient setting may reapply for accreditation ~~no sooner than 12 months at any time~~ after receiving notification of the denial.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.